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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR CERTIORARI

LOUIS STRUMSKIS V. THE UNITED STATES

Court of Claims No. 232-68

Louis Strumskis, Plaintiff (Pro se)
3230 S.E. 10th Avenue
Ocala, Florida 32670

INTRODUCTORY STATEMENT

This Petition for Supreme Court review falls under rules 19 and 23 in order to be consistent with substantial justice and the establishment of good precedents into future cases.

At issue are the laws, arguments, statements, opinions and conclusions, as decided by the U.S. Court of Claims on February 16, 1973.

This same issue also involves the subsequent matters and things in Plaintiff's motion for a rehearing and oral argument, as denied on April 13, 1973 and to Plaintiff's motion for a new trial, as denied on June 20, 1973.

The provisions governing this certiorary are found under 28 U.S.C. Section 1498.

Further, the Fifth Amendment to the Constitution stipulates... "nor shall private property be taken for public use without just compensation".

There are two questions of law and the subsequent conclusion or relief to be decided by this Supreme Court of the United States.

I QUESTION

DOES NOT THE LAW OF CONTRIBUTORY INFRINGEMENT PROTECT THE PROPERTY RIGHTS AS GRANTED AND CLAIMED FOR THE PROPELLER MECHANISM IN THE COMBINATION TYPE PATENT NO. 3,155,065 ?

I STATEMENT

"The infringement of a major component or mechanical act within a combination type patent, does fall under the doctrine of contributory infringement and has been a part of our law for about 80 years. This law applies to one who makes, uses or sells the heart of a patented machine"...

..."The thing sold must be a component of a patented machine, manufacture, combination or composition"... "The thing sold is presumably not itself patented since if it were patented, the question of contributory infringement, as distinguished from direct infringement, would scarecely arise and the paragraph would have little or no apparent purposes". U.S.C. Title 35 Chapter 28, subparagraphs (a) (c) (d) Section 271.

Simplified, one is able to see that contributory infringement involves the infringement of that plurality of elements given claim to an advantageous and a unique component within a patented machine. Usage of the entire machine comprises actual or direct infringement, of course.

However, such a simplified analogy to infringement can be more readily understood as one who holds the leg of a cow, the same is guilty of holding the entire cow. *"Contributory infringement generally presupposes actual infringement".* Cincinnati Tool & Mfg. Co. C.C.A. Ill., 1928, 26 F. 2d 593.

What is claimed for the propeller component in Claim No. 5 of Patent No. 3,155,065, the Patent in question is:

1. A propeller of the multi-blade type.
2. Mounted on bearings.
3. Within a tube (rather than within a specially built bowl as in most jet-stream craft)
4. A power unit operating each propeller.

"The fact that a combination later appears to be a simple one does not necessarily negative the presence of a high degree of invention". Levin vs. Coe, App. D.C. 1942, 132 F.2d, 589. See also, Ashby vs. Cleaners Specialties, D.C. Mo. 1940. 32 F. Supp.85.

The Supreme Court must understand here that approximately 21% of all patents are issued to private individuals and a great many of these patents are of the conglomerate or combination type, similar to Plaintiff's Patent here in question.

Therefore, were that one decision of February 16, 1973, to let stand, such action would not only be in collision with that section of the law given to contributory infringement, but the same would adversely affect the property of many private inventors.

I ARGUMENT

The laws and related reference pertaining to contributory infringement were neither discussed at the trial nor presented for consideration to the U.S. Court of Claims by the Plaintiff until after the Commissioner's Report to the Court was filed on August 30, 1972.

However, these pertinent laws and references were indeed highlighted in all subsequent briefs such as "Plaintiff's exceptions" (to the Commissioner's report) filed on Sept. 21, 1972 and in "Plaintiff's Reply Brief under Rule 143(b) and Objections to Defendant's Brief and Requested Findings of Fact", as filed on November 7, 1972... and also discussed and made known to the Court in the Oral Arguments of January 11, 1973.

Nevertheless, the Court responded in it's final judgements of February 16, 1973 by the re-printing of the same Commissioner's report which was filed on August 30, 1972... thereby torting all of Plaintiff's pertinent laws, arguments, statements and references not heard afore and which were submitted for consideration under the Rules of the Court of Claims.

Such a torting of pertinent matters and things against the case of the Plaintiff cannot but be found without a just cause and such injustice must be reversed lest we suffer the consequences of establishing ill precedents and ways into future cases.

The propeller mechanism as found in Claim 5 of the Patent, is made up of a plurality of elements whose totality does comprise a unique and an advantageous component... which is the very heart of Plaintiff's Patent No. 3,155,065.

"The doctrine of contributory infringement is still an important element of Patent law and may be urged by an injured party, and whether it applies to any case must be determined from the facts presented". Detroit Lubrication Co. v.s. Toussaint, D.C. Ill. 1944, 57 F. Supp. 837.

Plaintiff's exhibits #6 and #7 are comprised of two letters from the biggest shipbuilders on this earth today... one is signed by the General Manager of Nippon Kokan Kabushiki Kaisha and another by the Manager of the Technical Department of Sasebo Heavy Industries Co., Ltd. ... both of these responsible men differentiate the propeller mechanism from the remainder of the Patent in question and both of these successful shipbuilders consider such a unique propeller "the propulsion method of the future".

Further and of greater importance to this particular case, the Defendant recognized the uniqueness of Plaintiff's propeller in his ANSWER,

paragraph 2, wherein he states: "Defendant admits that the patent in suit relates to propelling mechanisms". *"In suit in equity defenses not set up in the answer will not be considered".* Howes vs. Nute C.C. Mass. 1870, Fed. Cas. No. 6,790.

The claims section of a patent are given for the protection of novel components and machines... as these meet the requirements of invention. Otherwise the rifling of unique and advantageous components from combination-type patents would become rampant.

Hence and in view that the Defendant did admit that the Patent in suit relates to propelling mechanisms, that judgement of February 16, 1973, pages 6, 7 and 8 which now denies the Plaintiff his patented claims to his unique propeller mechanism, cannot but be considered an estoppel.

FUNDAMENTAL LAW IN CONTRIBUTORY INFRINGEMENT

One of the sub-questions here at issue lies in the definition of an inventor's claim to a novelty. In here, one must differentiate the boundaries of a numerical claim, as found in the latter section of each patent, from those boundaries which comprise the essence and requirements of invention.

It is indeed possible for a citizen to possess a legal claim to a mechanical mechanism... **without the benefit of possessing a single letter of Patent**. One need merely publish his mechanism in a public publication. Such rights of claim were indeed mentioned by the Defendant in his ANSWER paragraphs 20 and 28... wherein **Popular Mechanics Magazine** and **Power Boat Magazine** were brought up in the issue of Patent invalidity.

Nevertheless, one cannot abandon fundamental law and in order to infringe upon a patent, the following criteria is necessary in a novel and unique

mechanical mechanism:

1. The mechanism must meet the requirements of invention. Anticipated success does aid to identify invention.

2. The novel and unique mechanism must also be found in at least one of the numerical claims. Admission in Defendant's ANSWER paragraph #2 should be accepted in any Court of law.

3. For a claimed mechanical component to be infringed, each and every element found in that **claimed component** must also be found in the accused structure. All of the combined elements in the patented propeller mechanism are also found in the combination stipulated in that one offer to dismiss the Case.

May the Supreme Court notice that the injustice and derailment against Plaintiff's case can be traced to the meaning of the very first sentence in page 8 of that judgement given on February 16, 1973, to wit:... "Accordingly, the omission of any one of the elements making up the claimed (sic) combination avoids all charges of infringement".

Here, one must distinguish between a combination of elements as **claimed** for a **component**... from a combination of components and mechanisms which make up the entire machine.

In view of the laws given to contributory infringement, one cannot compare oranges to oranges by comparing a single orange to an entire orange tree. Such a comparison would legally be unbalanced.

However, the lack of justice in the judgement of February 16, 1973 issued by the Court of Claims, does stem from the torting of applicable law and arguments... without good cause shown therefore, since these arguments and laws were presented by this litigant under the rules of the Court.

In the recognition of those laws to contributory infringement, we must fit the alleged crime of

IN THE UNITED STATES COURT OF CLAIMS

231-68 CHRIS BERG, INC.)
) v. THE UNITED STATES
232-68 LOUIS STRUMSKIS)

Before COWEN, Chief Judge, LARAMORE, Senior Judge, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, Judges, except that Senior Judge LARAMORE participated only in No. 231-68 in which Judges KUNZIG and BENNETT took no part.

ORDER

These cases come before the court on motions requesting permission to file a motion for reconsideration out of time and a motion for a new trial under Rules 151 and 152 of the Rules of this court and, on consideration thereof,

IT IS ORDERED that said motions be and the same are denied as follows:

231-68 Chris Berg, Inc. Plaintiff's motion requesting permission to file a motion for reconsideration out of time.

232-68 Louis Strumskis. Plaintiff's motion for a new trial under Rules 151 and 152.

BY THE COURT

JUN 20 1973

Chief Judge

infringement to the corresponding component or act within a patent; rather than to humble the entire patent and compare the entire machine to a single act or component.

But what can a fair-minded person conclude after the Defendant admitted in his ANSWER, paragraph 2; "Defendant admits that the patent in suit relates to propelling mechanisms"...except for this Supreme Court to recognize such a unique mechanism as worthy of protection under the laws of contributory infringement, so that this one Court may not appear inconsistent with substantial justice.

II QUESTION

IS NOT A REJECTED OFFER TO THIS ONE CASE'S DISMISSAL BY DEFENDANT, OFFERED HIM UNDER THE RULES AND AUSPICES OF THE COURT AND STIPULATING HIS PREVIOUSLY AVOWED INNOCENCE TO INFRINGEMENT SUFFICIENT CAUSE TO CHARGE SUCH A LITIGANT WITH AN ADMISSION OF GUILT TO THAT VERY PARTICULAR INFRINGEMENT?

II STATEMENT

The law states: *"The burden of proving the charge of infringement rests with the Plaintiff unless it has been admitted by the Defendant"*. Vol. 40 American Jurisprudence Section 193.

Paragraph #3 of Plaintiff's original petition states: *"My contention to attest by your Court of Claims, is that the propeller mechanism in those Coast Guard boats in question, do infringe upon the material structures and objectives thereof as found in my Claim No. 5 found under column 4 lines 37, 38 and 39; illustrated in figure 4; further described in column 2 lines 46 to the end of paragraph in line 53; whose novelties and advantages are mentioned throughout the Patent"*.

In Defendant's ANSWER to Plaintiff's Paragraph 3 of the original petition was: **"Defendant denies each and every allegation of paragraph 3".**

"In suit in equity defenses not set up in the answer will not be considered". Howes vs. Nute, C.C. Mass. 1870 Fed. Cas. No. 6,790.

The Stipulated Offer to Dismissal draft which was offered the Defendant under the old Rule 67(a) [new Rule 102(a)] and given ten days to consider, stipulated both the verification and the signing of the following statement which was dated March 18, 1969: **"The U.S. Coast Guard is not presently using any water jet-stream craft which do possess an open-center-passageway propeller mechanism within a tube, which propeller does contain it's bearings on either side and outside the water passageway, which same propeller mechanism is activated from outside this same water passage: this in any manner or quantity or water jet-stream craft, regardless of whether any usage was considered to be legal or illegal, whether in patent conflict or without patent conflict attributed to Patent No. 3,155,065: usage retroactive to May 3, 1963."**

An inter-office letter of February 10, 1969 from Mr. T. Hayward Brown, Chief, Patent Section of the Department of Justice and addressed to Mr. K.S. Harrison, Chief Counsel for the United States Coast Guard said:

February 10, 1969

Louis Strumskis v. United States
Court of Claims No. 232-68

Dear Mr. Harrison:

Plaintiff has indicated his willingness to dismiss this suit provided he has assurance that the Coast Guard is not manufacturing jet stream boats

other than the Jacuzzi or the Buehler designs. Plaintiff has the impression that the Coast Guard through its own manufacturing facilities located somewhere along the east coast is manufacturing boats using his patented design. We therefore request that this office be notified of any Coast Guard activities involving the stream boat design of Mr. Strumskis other than those involving the Jacuzzi and Buehler designs.

Very truly yours,
WILLIAM D. RUCKELSHAUS
Assistant Attorney General
Civil Division
By: T. Hayward Brown
Chief, Patent Section

Unlike the contentions of Defendant found on Page #4 paragraph ~~#3~~ 5 in Feb. 16, 1973 Decision... Defendant did understand and did have prior knowledge to the matter in Plaintiff's generous offer to Dismissal.

II ARGUMENT

What was stipulated in that one offer to Dismissal was the verification to the wording and of signing by the then Coast Guard Commandant, Admiral Willard J. Smith. Were any other signatures required and/or added thereto, would not have changed or detracted from the spirit of that most generous offer to an irrevocable dismissal of the entire Case against Defendant through the Rules and auspices of the Court.

More particular, what was singularly offered to the Defendant was his very own words and statements of innocence to the charges made very implicitly by the Plaintiff in his Paragraph #3 of the original petition.

As can be seen in the ~~third~~ fifth paragraph of page 4 in the Judgement of February 16, 1973, the Defendant gave not less than 4 excuses for not

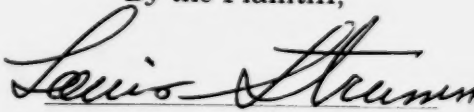
signing and thereby servicing that one Offer to Dismissal... but each and every one of these reasons were not uttered until AFTER ONE YEAR had passed from the date of the offer. Therefore, Defendant's creditability and the legality to time limitations involved, would render such reasons for not signing as void, or next to nothing.

CONCLUSION

The Plaintiff here hopes and prays that the Supreme Court may now consider all of the previously torted laws, references, arguments and statements as given here under the Rules of Certiorari, so that this one Supreme Court render new findings, conclusions and direct the entry of a new judgement.

More specific, the Plaintiff awaits that ruling whereas the propeller mechanism in Patent No. 3,155,065 does fall under the protection of the laws given to contributory infringement. Also, that the one particular refusal by Defendant to dismiss the entire Case against him, under the auspices and rules of the U.S. Court of Claims, does indeed comprise an admission of guilt to that very particular infringement, so that the Plaintiff may be entitled to recover.

By the Plaintiff,



Louis Strumskis

3230 S.E. 10th Avenue
Ocala, Florida 32670

LS:bs

IN THE UNITED STATES COURT OF CLAIMS

232-68	LOUIS STRUMSKIS	)
192-70	HERBERT BOOKMAN, ET AL.	)
435-70	H.B. MACHRY COMPANY	) V. THE UNITED STATES
785-71	A.L. ABBOTT, ET AL.	)

Before COWEN, Chief Judge, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, Judges.

ORDER

These cases come before the court on motions for rehearing, relief from final judgment, reconsideration, oral argument, to file an original exhibit and for further relief under Rules 151 and 152 of the Rules of this court and, on consideration thereof,

IT IS ORDERED this 13th day of April, 1973, that said motions be and the same are denied as follows:

232-68 Louis Strumskis. Plaintiff's motion filed, February 26, 1973, for a rehearing under Rule 151 to alter and amend the judgment entered February 16, 1973, etc. and plaintiff's motion requesting oral argument on motion for rehearing.

192-70 Herbert Bookman, et al. Plaintiffs' motion, filed January 22, 1973, for relief under Rule 152(b) from final judgment entered January 21, 1972, and plaintiffs' motion, filed January 22, 1973, to file original exhibit.

785-71 A.L. ABBOTT, ET AL.)

Before COWEN, Chief Judge, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, Judges.

ORDER

These cases come before the court on motions for rehearing, relief from final judgment, reconsideration, oral argument, to file an original exhibit and for further relief under Rules 151 and 152 of the Rules of this court and, on consideration thereof,

IT IS ORDERED this 13th day of April, 1973, that said

motions be and the same are denied as follows:

232-68 Louis Strumskis. Plaintiff's motion filed, February 26, 1973, for a rehearing under Rule 151 to alter and amend the judgment entered February 16, 1973, etc. and plaintiff's motion requesting oral argument on motion for rehearing.

192-70 Herbert Bookman, et al. Plaintiffs' motion, filed January 22, 1973, for relief under Rule 152(b) from final judgment entered January 21, 1972, and plaintiffs' motion, filed January 22, 1973, to file original exhibit.

435-70 H. B. Zachry Company. Plaintiff's motion, filed February 20, 1973, for reconsideration.

785-71 A. L. Abbott, et al. Plaintiffs' motion, filed February 16, 1973, for rehearing.

BY THE COURT

Chief Judge

In the United States Court of Claims

No. 232-68

(Decided February 16, 1973)

LOUIS STRUMSKIS v. THE UNITED STATES

Louis Strumskis, plaintiff, *pro se*.

B. Frederick Buchan, Jr., with whom was *Assistant Attorney General Harlington Wood, Jr.*, for defendant.

Before COWEN, *Chief Judge*, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG, and BENNETT, *Judges*.

OPINION

PER CURIAM: This case was referred to Trial Commissioner Joseph V. Colaianni with directions to make findings of fact and recommendation for conclusions of law under the order of reference and Rule 134(h). The commissioner has done so in an opinion and report filed on August 30, 1972. Exceptions to the commissioner's opinion, findings of fact and recommended conclusion of law were filed by plaintiff and the case has been submitted to the court on the briefs of the parties and oral argument of plaintiff, *pro se*, and the attorney for defendant. Since the court agrees with the commissioner's opinion, findings of fact and recommended conclusion of law, as hereinafter set forth, it hereby adopts the same as the basis for its judgment in this case. Therefore, plaintiff is not entitled to recover and his petition is dismissed.

494-336—73

COLAIANNI, *Commissioner:* This is a patent suit under 28 U.S.C. § 1498. Plaintiff, Louis Strumskis, seeks "reasonable and entire compensation" for unauthorized use by the Government of plaintiff's patented invention. Only the broad issue of liability is before the court; accounting, if any, is deferred to later proceedings. The patent in suit is United States Letters Patent No. 3,155,065 (hereinafter the "Strumskis" patent), issued on November 3, 1964, to Louis Strumskis on an invention entitled "Ship Stabilizer." Plaintiff has continuously been the sole and exclusive owner of all rights, title and interest in said patent.

This litigation, as originally framed, included the usual issues of patent validity and infringement. However, at the trial defendant agreed, for purposes of this proceeding only, to rely solely upon the defense of noninfringement. While the Strumskis patent has five claims, plaintiff only urges that defendant has infringed claim 5.

Background

The patent in suit relates to a system which is capable of propelling and steering ships while at the same time stabilizing them from pitch and roll. The system, which is fully described in findings 4 and 5, includes a pair of water inlet ducts that extend from each side of the craft and terminate in water discharge ports at the craft's stern. In addition, a Y-shaped duct which spans the entire length of the craft is provided with a pair of inlet ports at the ship's bow and a single outlet port at the ship's stern. Each of the three intake ducts is equipped with separate multi-blade, open-center propeller mechanisms. Vertically mounted blades or fins are arranged relative to the outlet ports of the water intake tubes for steering of the ship. Stabilization is achieved by gyroscope-controlled hydraulic jacks which, in turn, operate individual arrays of fins that are positioned at the intake ends of the side ducts. Each of the tubes may be sealed by a gate mechanism at the inlet ports. Finally, manholes are provided for access to the water ducts.

The Patent Claim

Claim 5, the only claim which plaintiff alleges has been infringed by the United States, provides:

> 5. A ship stabilizer of the character described, comprising three water conducting tubes mounted within the hull of a ship, one of the said tubes being Y-shaped at the bow of the said ship and extending from the bow to the stern of the said ship, and each of the two remaining tubes mountd [sic] on each side of the said ship, and each tube having a mechanically controlled water inlet and a water outlet having a plurality of blades therein, the said outlet blades of said two removing tubes being mounted vertically, thereby providing an improved means of steering the said ship, and a propeller of the multi-blade type mounted on bearings and within each one of the said tubes, and a power unit operating each propeller, and the mechanical mechanism of each water inlet embodying a plurality of swingably mounted, horizontally disposed fins in equal vertical-spaced relation to each other, the said fins being mechanically connected to a hydraulic jack automatically operated by a gyrosope [sic], thereby providing automatic stabilization of the said ship, and each said water inlet having a sliding door valve therein, thereby providing a means of preventing water from entering the water conducting tubes while they are being repaired or cleaned out, and a manhole in the upper and forward and rearward ends of each of the three water conducting tubes, the manholes also providing a means of maintenance of the inside of the said water conducting tubes.

Infringement

The trial record fails to support plaintiff's charge of infringement. Plaintiff has, for reasons which follow, failed to convincingly prove that defendant, during the six years immediately preceding the filing of this action, procured and/or used the invention covered by claim 5 of plaintiff's patent.

Defendant admits, see finding 9, to having procured and/or used six water jet-stream craft of standard commercial design during the relevant six-year period. Both plaintiff and defendant agree, as indicated by finding 10, that none of these six boats, as originally procured, infringed his

patent. The parties further agree that repairs made to five of the craft during their Coast Guard service did not change their original configurations in such a way as to amount to infringement of claim 5 of plaintiff's patent. However, plaintiff continues to urge, see finding 13, that certain structural alterations and changes were made to the sole remaining craft, bearing Coast Guard identification CG-180075, such that a new configuration, which does infringe claim 5 of his patent, resulted.

Plaintiff contends that he has adequately demonstrated and proved that defendant has, without his authorization or consent, utilized his patented invention. Plaintiff has attempted to show that defendant has infringed claim 5 of his patent through a number of independent and unrelated theories. Each of plaintiff's theories will be discussed. Plaintiff's charge that defendant has by its actions admitted to having infringed claim 5 of plaintiff's patent will be initially dealt with.

Plaintiff, during trial and in his post-trial submissions, has stressed defendant's failure to execute a so-called March 21, 1969, stipulation of dismissal. Plaintiff's March 21, 1969, offer of dismissal was treated by the trial commissioner as a contingent motion to dismiss under what is now Rule 102(a)(1)(iii) of this court, see finding 14. Moreover, since it was not executed, as the conditions of the offer required, by the Commandant of the U.S. Coast Guard within the 10 days during which plaintiff's offer was to remain open, the motion was denied on April 2, 1969.

Plaintiff contends that an innocent party would have quickly accepted his offer of dismissal. Plaintiff thus reasons that the only explanation for defendant's failure to act is that defendant must have been using an open-center propeller on its water jet craft. Based on the above, plaintiff urges that defendant's failure to accept his offer should be interpreted by this court as an admission of infringement.

Defendant, on the other hand, contends, *inter alia*, that plaintiff's offer was not accepted because it should have been directed to the Department of Justice and not to the Commandant of the U.S. Coast Guard, and also because the offer was unclear and ambiguous. Defendant further contends that its failure to act on plaintiff's offer cannot be taken as an

admission of infringement because such charges were formally and categorically denied by its answer to plaintiff's petition. Defendant also argues that plaintiff's offer was unacceptable because it would not have been dispositive of plaintiff's charges of infringement, and thus would have amounted to little more than a useless act.

Particularly, defendant points out that a careful reading of the alleged offer of dismissal, see finding 14(a), shows it to be premised solely on the Coast Guard's use or nonuse of an open-center propeller. Defendant correctly points out that the Coast Guard's use or nonuse of an open-center propeller would not be dispositive of the issue involved in this case because claim 5 of plaintiff's patent is directed to a ship stabilizer that calls for a number of other structural elements in addition to an open-center propeller.

Accordingly, it is concluded that defendant's explanation is reasonable and justifies its failure to act on plaintiff's offer of dismissal. It is further concluded that defendant's action or nonaction relative to plaintiff's March 21, 1969, motion does not amount to an admission of infringement of claim 5 of plaintiff's patent.

Plaintiff offered no documents nor oral testimony to show that defendant had indeed infringed claim 5 of his patent. Instead, plaintiff, in addition to his contentions that defendant has admitted to infringing his patent, bases his arguments on a number of inferences which appear to be nothing more than extrapolations of alleged unrelated facts. For example, it appears that the grounds for plaintiff's original complaint of infringement took shape after plaintiff was allegedly informed by an unidentified retired Coast Guardsman, see finding 13, of the capability of certain of that service's water jet craft to attain speeds as high as 47 m.p.h. Plaintiff also claims to have established, as a result of a telephone conversation which he had with a Coast Guardsman who was serving on the USS Foxglove, that Coast Guard craft CG–180075 was capable of achieving speeds as high as 47 m.p.h.

Plaintiff argues that a water jet craft would not be capable of reaching such high speeds unless it had been modified in a manner as disclosed by claim 5 of his patent. However, none of the witnesses who appeared at the trial testified that

CG–180075, the only water jet craft which plaintiff now charges with infringement of his patent, was capable of achieving a speed of 47 m.p.h. Furthermore, even if it can be assumed that plaintiff had convincingly shown that one or more of the Coast Guard's water jet craft was capable of reaching a speed of 47 m.p.h., plaintiff's argument would still fall far short of proving his claim of infringement. Plaintiff's arguments fall short of their mark because he has not shown with any degree of certainty that the water jet craft which allegedly reached those high speeds incorporated all of the structural elements of the patented construction defined by claim 5.

Plaintiff next points to a $1,026.33 increase in the value placed on the hull of CG–180075 as evidence of a significant structural modification or alteration having occurred. Plaintiff hypothesizes that the $1,026.33 increase in value would be enough to pay for the building and installation of an open-center propeller on Coast Guard craft CG–180075. Plaintiff, however, offered no documents nor witnesses to support his claims.

Defendant offered no satisfactory explanation for the increase in value of the hull of craft CG–180075. Nonetheless, plaintiff's speculations on what might have occurred are unconvincing for several reasons.

In the first place, defendant produced a number of witnesses who testified that changes such as plaintiff indicates must have occurred to CG–180075 would have required authorization from Coast Guard headquarters. However, a search of areas where such records would be stored failed to turn up any such authorization. They further testified that detailed drawings would have been necessary in order to make the type of structural changes which plaintiff contends occurred to CG–180075, but that a search of areas where such drawings would be kept failed to produce any relevant drawings.

Defendant also points out that the changes, such as plaintiff contends were made to CG–180075, would have been recorded in the Coast Guard boat records for that craft. A review of the records in evidence fails to indicate that any structural changes such as plaintiff urges occurred.

In sum, as more fully treated in findings 17 through 22, defendant's witnesses testified that a thorough search failed to uncover any records, drawings, or documents which indicate that structural-type changes, such as are called for by claim 5 of plaintiff's patent, were made to CG–180075.

Defendant, however, urges that plaintiff's charge of infringement is untenable for an even more fundamental reason. Specifically, defendant points out that plaintiff appears to be urging that the use by the Coast Guard of an open-center propeller in CG–180075 is enough to establish infringement of claim 5. The following statement from pp. 5–6 of plaintiff's November 1, 1971, reply brief confirms that to be plaintiff's position:

> The center of Defendant's Questions found in page 1 of his Part I rests in the vague belief that each and every structurally claimed "mechanism" and act in a conglomerate patent must be found crammed within a singular and accused "mechanism" and act, to infringe. To say that the entire conglomerate of a patent, rather than that one particular "mechanism" therefrom-and-in-question, must be present in that one accused "mechanism" in order to infringe * * * is an absurdity. But to heed such an absurdity would be legally disastrous to any similar and forthcoming Case, for such an imbalance is contrary to basic law. [Underscoring in original.]
>
> * * * * * * *
>
> * * * *The only issue at hand lies in Defendant's usage of Plaintiff's unique open-center propeller mechanism.* [Italic supplied.]

Plaintiff's position, as stated above, is incorrect and does not agree with all known standards and definitions of patent infringement.

This court has consistently maintained that the metes and bounds of an invention are defined by the claims of a patent and not its drawings or specification. *Kuhne Identification Systems, Inc.* v. *United States*, 82 Ct. Cl. 237, 258, 28 USPQ 151 (1936); *Badowski* v. *United States*, 143 Ct. Cl. 23, 27, 164 F. Supp. 252, 255, 118 USPQ 358, 361 (1958).

Equally long established is the necessity to resort to the language of the patent claims in determining whether or not an accused device infringes a patent. *Dvorsky* v. *United*

States, 173 Ct. Cl. 638, 352 F. 2d 373 (1965), *cert. denied*, 8[illegible] S. Ct. 456, 393 U.S. 983 (1968). As explained in *Dvorsky*, patent claims are required by statute, 35 U.S.C. § 112, for the very purpose of forcing a patentee to particularly point out and distinctly claim the subject matter which is regarded to be the invention.

In *Autogiro Co. of America* v. *United States*, 181 Ct. Cl. 55, 60, 384 F. 2d 391, 395-96, 155 USPQ 697, 701 (1967), *rehearing denied*, 184 Ct. Cl. 801 (1968), this court clearly stated:

> The claims of the patent provide the concise formal definition of the invention. * * * It is to these wordings that one must look to determine whether there has been infringement.

In this instance, plaintiff's claim 5 comprises all of the elements which the Patent Office considered to be necessary to define plaintiff's ship stabilizer. All the elements which make up the combination defined by claim 5 are considered to be material and necessary. *Fay* v. *Cordesman*, 109 U.S. 408, 420 (1883). Accordingly, the omission of any one of the elements making up the claimed combination avoids all charges of infringement. This last principle was announced by the Supreme Court, at least as early as 1842, in the case of *Prouty* v. *Draper*, 41 U.S. (16 Pet.) 336, and has been consistently followed by this court. See *Pacific Submarine & Earthquake Proof Wall Co.* v. *United States*, 19 Ct. Cl. 234 (1884); *Autogiro Co. of America*, *supra*, at 72, 384 F. 2d at 403.

Turning now to a review of the structural combination covered by claim 5, and comparing it to the accused water jet craft, it is concluded, for reasons more fully set out in findings 17 through 22, that plaintiff's charge of infringement is unsubstantiated and unsupported. Particularly, plaintiff candidly admits that none of the water jet-stream craft as originally procured or allegedly altered or modified ever included a gyroscope. Claim 5 specifically calls for a gyroscope, and for this reason alone plaintiff has failed to sustain his charge of infringement with regard to claim 5. Moreover, plaintiff has not shown that defendant has procured or modified any of the six pertinent water jet craft to include three water conducting tubes in the hulls of the

ships, open-center propellers, hydraulic jack operated fins, or many of the other elements called for by claim 5. In sum, plaintiff has not shown that during the six years relevant to this proceeding defendant has procured, modified or used any water jet craft having the structural combination called for by claim 5 of his patent.

It is thus concluded that defendant has not infringed claim 5 of plaintiff's patent. It is felt to be unnecessary to consider the validity of claim 5.

Plaintiff is not entitled to recover and his petition is dismissed.

Findings of Fact

1. This is a patent suit arising under the provisions of 28 U.S.C. § 1498 for reasonable and entire compensation for unauthorized use of an invention described and claimed in United States Letters Patent No. 3,155,065 entitled "Ship Stabilizer," issued on November 3, 1964, to Louis Strumskis on an application filed May 3, 1963.

2. Plaintiff, Louis Strumskis (hereinafter sometimes referred to as "Strumskis"), is currently, and has been continuously from its date of issuance, the sole owner of all rights, title and interest in the patent in suit. The petition was filed August 14, 1968, by Mr. Strumskis, *pro se*.

3. In accordance with the provisions of Rule 131(c), the issues before the court were initially limited to patent validity and infringement. The issue of accounting was deferred until after a ruling by the court on the issues of validity and infringement. During trial defendant agreed, for purposes of this proceeding only, to rely solely upon the defense of noninfringement.

4. The patent in suit relates to a system which not only prevents the roll and pitch of ships, but also propels and steers the ships over a wide range of speeds. The specification of the patent sets forth a number of objects of the invention. The following are felt to be the most pertinent to the questions at bar:

> It is the principal object of my invention to provide a ship stabilizer that is operated by the action of the water passing through certain conducting pipes, as will be hereinafter described.
>
> Another object of this invention is to provide a ship

stabilizer that has its stabilizing movements made wi
a hydraulic jack activated by a gyroscope.

Another object of this invention is to provide a sh
stabilizer in connection with the propelling mechanis
that will eliminate cavitation found in the ordina
propeller movement at high speed.

Another object of this invention is to provide a sh
stabilizer that is so constructed as to also do away wi
the necessity of a rudder for steering by reason of t
action of the water passing through the pipes and acti
on the fins, as will be described in detail later on in th
specification.

5. The specification of the patent in suit describes t
structure, in connection with Figs. 1–5 which are reproduc
herein, as follows:

* * * there is generally indicated by the character
a ship's hull in which is located a water conducti
tube 9 that extends from the bow 10 of the ship to t
stern 11. The tube 9 is Y-shaped at the bow and is pr
vided with a pair of parallel and spaced, forward facin
openings 12, to which is connected a sliding gate mech
nism 13 that controls the amount of water entering t
aforesaid conducting tube 9. A suitable power supp
unit 14 of any desired type is located just above t
tube 9 which is provided with a propeller housing
having a propeller 16 of the multiple blade type locat
therein. The power supply unit and the propeller a
housing are located in the stern portion of the ship. T
aforesaid conducting tube terminates at the stern in a
outlet 17 having a sliding door valve 18.

A separate stabilizing unit 19 is located on one side
the ship, while an alike stabilizing unit 20 is located
the other side of the ship. Each stabilizing unit e
bodies a conducting tube 21 having a water inlet 22 on t
forward end thereof. Each water inlet comprises a f
supporting structure 23, in which is located a plurali
of fins 24 having a supporting shaft 25 at one end there
and a second supporting shaft 26 at the opposite end
the fin 24. The supporting shaft 25 terminates in a bea
ing housed in a cap 28, while the supporting shaft
passes through a bearing 29 and terminates in a hydra
lic jack operating mechanism 30 that is operated by t
hydraulic jack 31, which is activated by a gyroscope 3
One takeoff from this gyroscope is connected by line 36
the hydraulic jack 31 in tube 9 and another takeoff
connected by lines 37 to hydraulic jacks 31 in tubes
and 20. This gyroscope operates the jacks in a conve

STRUMSKIS PATENT NO. 3,155,065

Ship Stabilizer

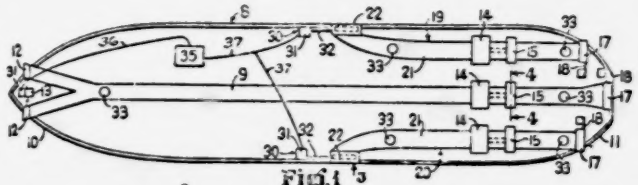


Fig. 1

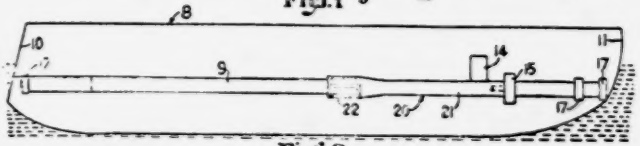


Fig. 2

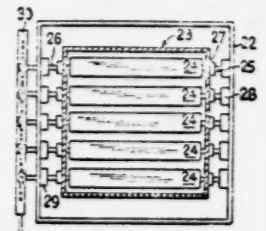


Fig. 3

Fig. 4

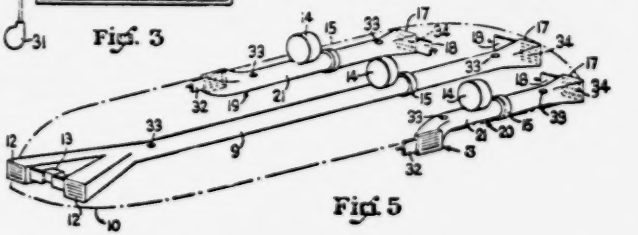


Fig. 5

tional manner well known in the ship stabilization art. * * *

* * * The pitch of the propeller blades can be automatically adjusted to any forward or reverse movement without the necessity of stopping its rotational movement. The feathering of the propeller blades is sometimes desired and can, of course, be done by mechanism well known in the art when one desires constant speed for high efficiency. The feathering of the propellers of a ship would be similar to the feathering of the propellers of an airplane. The main source of the ship's thrust, aside from

the "pull-push" effect of the water flowing through the tubes on the water outside the ship, is the "biting" effect of the rotating propeller blades on the water; therefore, bearings (not shown in the drawing) are placed externally on either side of the aforesaid housing 15, in order to support the constant thrust produced by the propeller.

For more efficient guiding or steering of a ship than is possible with the present well-known rudder system, the blades 34 that are located in the outlets 17 may be mounted vertically, even while there is no forward or backward movement of the ship, if the water in the center tube, that is, the conducting tube 9, is caused to flow in reverse.

It may be well to remark at this time that the water inlets 22, which are parallel to the ship's side, do not protrude and in any way interfere with the docking of the ship, but rather help the docking by eliminating the use of tug service. The fins 24 located within the aforesaid water inlets 22 on each side of the ship obviously control the roll of the ship on which they are located, since these fins will operate inversely to each other at the automatic command of the already mentioned gyroscopes. The novel way in which the fins 24 are parallel to the side of the ship will naturally reduce the rolling motion of the ship without the necessity of reducing the ship's speed in order to reduce the side shock that is created by the use of the wing-type stabilizers.

6. Claim 5, the only claim in issue, is set out in outline form below:

> 5. A ship stabilizer of the character described, comprising
>
> three water conducting tubes mounted within the hull of a ship,
>
> one of the said tubes being Y-shaped at the bow of the said ship and extending from the bow to the stern of the said ship,
>
> and each of the two remaining tubes mountd [sic] on each side of the said ship,
>
> and each tube having a mechanically controlled water inlet and a water outlet having a plurality of blades therein,
>
> the said outlet blades of said two removing tubes being mounted vertically, thereby providing an improved means of steering the said ship,

and a propeller of the multi-blade type mounted on bearings and within each one of the said tubes,

and a power unit operating each propeller,

and the mechanical mechanism of each water inlet embodying a plurality of swingably mounted, horizontally disposed fins in equal vertical-spaced relation to each other, the said fins being mechanically connected to a hydraulic jack automatically operated by a gyrosope [sic],

thereby providing automatic stabilization of the said ship,

and each said water inlet having a sliding door valve therein,

thereby providing a means of preventing water from entering the water conducting tubes while they are being repaired or cleaned out,

and a manhole in the upper and forward and rearward ends of each of the three water conducting tubes,

the manholes also providing a means of maintenance of the inside of the said water conducting tubes.

7. Water jet-stream craft are distinguishable from the more customary propeller-driven craft in that they draw water through appropriate water intake openings. A suitable pump arrangement is employed to increase the velocity and pressure of the water. The speed of the water jet craft is proportional to the velocity of the water which is discharged through an opening at the stern. Steering of water jet craft is achieved by controlling the position of deflector plates relative to the water outlet. The ability of water jet craft to operate in only a few inches of water enables them to substantially outperform their propeller-driven counterparts insofar as shallow water operation is concerned. The speed capabilities of water jet craft appear to be in dispute. Plaintiff claims that water jet craft having a construction as called for by claim 5 of his patent are capable of speeds as high as 47 m.p.h. However, no testimony was submitted to substantiate his claim.

8. Plaintiff appears to be contending that defendant, through the U.S. Coast Guard, has within the six years im-

mediately preceding the filing of this suit, procured and/or used jet-stream craft which infringe claim 5 of his patent.

9. Defendant admits to procuring and/or using a number of jet-stream boats during the relevant six-year period. Among the boats which defendant admits to having procured and/or used during the period of August 14, 1962, and August 14, 1968, inclusive, are two 21-foot craft, each equipped with Jacuzzi jet pump propulsion units and bearing Coast Guard identification numbers CG–21045 and CG–21046. Defendant also admits to procuring and/or using one 18-foot and three 22-foot jet craft from the Turbocraft Division of the Buehler Corporation of Indianapolis, Indiana, bearing respectively identification numbers CG–180075, CG–22111, CG–22112 and CG–22113 during the period relevant to this particular suit.

10. The parties are apparently in agreement, and no evidence to the contrary is currently before the court, that the six identified jet craft were procured by the Coast Guard as standard off-the-shelf-commercial items, and that as originally procured the craft did not infringe claim 5 of plaintiff's patent.

11. The evidence introduced during the trial showed that only standard repair-type changes were made to Coast Guard craft CG–21045 and CG–21046. Nothing was introduced, by way of testimony or documents, to show that any structural changes were made by the Coast Guard during the time that these accused craft remained in service.

12. Similarly, no evidence was introduced to show that structural changes were made by the Coast Guard to craft CG–22111 through CG–22113. Official Coast Guard boat reports of these craft indicated that only repairs which were necessary to enable them to be kept in operation were made.

13. (a) Coast Guard craft CG–180075 appears to be the only craft which plaintiff contended was modified in an allegedly infringing manner. During pretrial discovery plaintiff attempted, without success, to determine the types of structural changes made by the Coast Guard on CG–180075.

(b) Plaintiff's attention was initially drawn to CG–180075 through alleged discussions with Coast Guard service personnel. These discussions apparently convinced plaintiff of

the craft's ability to reach speeds of 47 m.p.h. The particular individuals alleged to have made the statements to plaintiff did not appear as witnesses. Based upon the alleged speed capabilities of CG–180075 relative to standard commercial jet boats, which were only capable of attaining speeds of between 20 and 30 m.p.h., plaintiff concluded that the craft must have been modified in a way as disclosed by claim 5 of his patent.

(c) On March 4, 1969, the trial commissioner issued an order for call on the U.S. Coast Guard, Department of Transportation. The call ordered the Coast Guard to file with the Clerk a drawing of the character described in plaintiff's motion to subpoena drawing filed February 10, 1969. Plaintiff's motion requested a drawing of a—

> * * * water jet-stream propeller mechanism, embodying an open-center * * * passageway mechanism within a tube, activated from outside this water passage; * * * as found in the water jet-stream boats, 16 ft. to 24 ft., manufactured by the U.S. Coast Guard * * * [at the U.S. Coast Guard Yard, Curtis Bay, Baltimore, Md., and which enabled these Coast Guard boats to achieve] the heretofore unheard-of speeds of 47 m.p.h. * * *.

(d) Defendant has steadfastly maintained, by way of response to the call and through witnesses at trial, that no drawings of the propeller mechanism sought by plaintiff ever existed.

14. (a) Plaintiff, on March 21, 1969, filed with the Clerk of the court, a paper entitled "Stipulated and Prejudiced Offer to Dismissal." The trial commissioner treated the paper as a contingent motion to dismiss under what was then Rule 67(a)(1)(iii). The motion provided for dismissal of the suit if the Commandant of the Coast Guard would admit, within 10 days, that the Coast Guard was not then—

> * * * using any water jet-stream craft which do [sic] posess [sic] an open-center-passageway propeller mechanism within a tube, which propeller does contain it's [sic] bearings on either side and outside the water passageway, which same propeller mechanism is activated from outside this same water passage; * * *.

(b) Defendant did not formally respond to plaintiff's March 21, 1969, motion and, thus, after the passage of the allowed 10 days for acceptance, it was denied.

15. (a) The testimony during trial and the documents

submitted into evidence establish that the single 18-foot jet-stream craft (the craft actually had a length of 17 feet 10 inches), which was later to bear Coast Guard identification No. 180075, was obtained by the Coast Guard pursuant to order CG–54,155–A, and a January 17, 1962, contract No. Tcg–41911, from the Turbocraft Division of the Buehler Corporation of Indianapolis. The water jet-stream propelled craft was of Fiberglas construction and included a standard Buehler design, Model 75–3 multi-stage, 7½ inch diameter, axial-flow pump propulsion unit.

The craft was provided with a single intake for the pump unit. This single intake was positioned on the bottom of the boat adjacent to the stern and carried water from the intake port to a discharge outlet located in the stern of the boat. Three axially-aligned, shaft-mounted propellers, were employed.

The commercially delivered craft was not provided with water conducting tubes at either of the ship's sides. Further, sliding door valves were not provided at the single bottom positioned inlet. Also, the Buehler craft was not equipped with a hydraulic jack nor a gyroscope to operate the same. Finally, the craft did not come equipped with an open-center propeller such as shown in Fig. 4 of plaintiff's patent.

(b) The Coast Guard procured the craft in order to compare the operational effectiveness of a water jet-stream propelled craft with a conventional propeller-driven craft in conducting aids to navigation-type work. Thus, on February 12, 1962, P. O. Chapman, Commanding Officer of the Field Testing and Development Unit at Curtis Bay, Md., was informed that he could expect to shortly receive the Buehler water jet craft and was also told:

> 3. Upon receipt of the boat and after indoctrination in its use, please carry out standardization trials on the boat as received. * * * After completion of trials as received, remove the pump and replace with a propeller and shaft, temporarily modifying the boat as required to do so. Using a temporary tiller, perform the same trials as above. Determine the performance of the pump propulsion relative to propeller propulsion.
>
> 4. Upon receipt of the boat, please determine the diameter of propeller which can be swung, and maximum engine rpm. We will furnish propeller data.

(c) Chapman, on August 13, 1962, reported that in order to carry out the evaluation desired the following work was anticipated:

> a. Remove jet pump unit and drive shaft from the 17'–10'' turbo-craft boat.
>
> b. Close all openings left by jet pump removal by making epoxy-glass cloth build up.
>
> c. Manufacture and install a propeller shaft of suitable length and diameter, * * *. Installation to include necessary shaft log, bearing and strut, also engine nalignment [sic]. Provision will have to be made for cooling water for engine since this is presently taken from jet pump.
>
> d. Manufacture and install a rudder and steering mechanism.
>
> 2. *The above equipment will be in service for a very few days*, just long enough for speed and power measurements, *after which the original equipment will be reinstalled.* * * * [Italic added.]

Captain Chapman testified at trial that all of these intended alterations were not necessary and that in fact the only temporary modifications made consisted of:

(i) removal of the axial flow pump and jet stream deflector;
(ii) temporary patching of hull openings;
(iii) installation and connection of a Mercruiser II propeller to the existing Chrysler engine; and
(iv) installation of temporary steering control.

(d) On April 5, 1963, Chapman filed his report on the engineering evaluation of the Buehler Turbocraft Propulsion Unit. The report, in addition to establishing that the craft had a maximum velocity of 31 m.p.h., reached the following conclusions:

> The Turbocraft, Model 35F plastic boat, powered by a 120 hp Chrysler, six (6) cylinder gasoline engine driving a Buehler 3 stage 7½ inch diameter axial flow pump is a light weight, trailerable, highly maneuverable runabout.
>
> Operation of the above boat with a Mercruiser II outdrive & propeller in lieu of the jet drive results in comparable maneuverability and generally improved performance at low speeds.
>
> In comparison with the inboard-outboard propeller drive tested, the jet drive is a less efficient means of

propulsion as indicated by a lower propulsive coefficient over the full operating range obtainable.

The performance of the jet propelled boat is severly [sic] penalized by added weight.

16. The above-documented events relative to the 18-foot Buehler craft were substantiated by the testimony of Capt. P. O. Chapman. Capt. Chapman recalled the temporary changes for test purposes made to the craft. Capt. Chapman recalled the removal of the craft's original jet pump and the installation of a conventional Mercruiser outboard propeller mechanism. The testimony also showed that after completion of the tests, and in late 1962, the outboard propeller mechanism was removed and the original jet pump was reinstalled. Capt. Chapman further testified at the trial that the commercially procured Buehler craft was never modified to include an open-center propeller as disclosed in plaintiff's patent. He further testified that the boat was placed back into its original commercial configuration after the tests were performed and that it was transferred in late 1963 to its operating center in the Second Coast Guard District.

17. The record establishes that the Coast Guard's only boat building facilities are at its Curtis Bay, Md., Yard. Capt. Chapman testified that at least as late as 1969, when he had occasion to check into the matter as a result of plaintiff's accusation of patent infringement, the Coast Guard had never built any water jet craft at the Curtis Bay Yard.

18. In addition, Adm. Morrison, Chief Counsel for the U.S. Coast Guard, testified that a search of records at the Curtis Bay Yard failed to uncover any drawings made by Coast Guard engineers for use in the manufacture of open-center-type propellers.

19. As noted above, Capt. Chapman's testimony was solely directed to the temporary modifications which were made to the 18-foot Buehler craft while it was under evaluation at the Curtis Bay Yard. Further, the parties are in agreement that the 18-foot Buehler craft was, at the time it was shipped out of Curtis Bay, Md., in its original commercial condition.

20. A review of the trial transcript reveals that no Coast Guard records were found to establish that any modification

in structure, aside from normal wear-and-tear-type repairs, was made to any of the six hereinabove-identified water jet-stream craft. Mr. Peter Alfred Silvia, the individual having cognizance over design modifications to all boats in the Coast Guard fleet since late 1967, personally did not recall modifying any boats to incorporate an open-center propeller. It was further established that modification of such a nature would require supporting paper work, drawings and authorization from Coast Guard Headquarters, and the supporting paper work and drawings for such a modification would be found in Coast Guard records that are kept by Mr. Silvia's group. A search of appropriate records failed to uncover authorization or drawings for altering any water jet craft to include an open-center propeller mechanism.

21. (a) Moreover, a review of available records indicates that no modifications of a design nature were ever made to any of the six water jet-stream craft while they were used by the Coast Guard. Particularly, a review of the Quarterly Boat Reports for CG–180075 indicates that a considerable amount of work was performed upon it during its Coast Guard service, but all of the work consisted of repairs to or structural replacement of its standard parts. There is no evidence to indicate that its pump unit was ever modified to an open-center propeller of the type shown in Fig. 4 of plaintiff's patent. Further, there is no testimony or evidence in the record to show that the craft was ever modified by the Coast Guard to include three water intake tubes. There has been no showing that open-center power-operated propellers, sliding door valves, inlet fins, or blade mechanisms, were ever installed at the water inlets on any of the jet-stream boats. In addition, no evidence or testimony was presented to show that the Coast Guard has ever procured, modified or used water jet craft that employ gyroscope-operated hydraulic jacks for controlling the operation of the inlet fins.

(b) The official boat records for Coast Guard craft CG–180075 show that defendant at one time increased the value placed on the hull of the craft by $1,026.33. The reason for the increase is unclear. Furthermore, the testimony of defendant's witnesses at trial failed to satisfactorily explain the increase.

22. (a) The testimony in the record established that the six hereinabove-identified water jet craft were intended and designed to operate as planing boats, i.e., in a way that as the craft came up to speed their bows projected substantially out of the water. It is, of course, necessary with these types of ships that the water intake ports be in the water at all times, and, with the bottom rearward position of the inlet duct on the commercially procured craft, this is taken into consideration. However, Mr. Silvia testified that a repositioning of the water intake ducts from the bottom of the craft to the bow, stern and sides, as shown in Fig. 2 of plaintiff's patent drawings, would render the planing craft effectively inoperative.

(b) The testimony further established, and plaintiff agreed, that it is impractical, unnecessary and costly to use gyroscopes on boats of the 18-to-22-foot class. The record establishes that the cost of installing a gyroscope on a boat of the 18-to-22-foot class would amount to as much as the original cost of the craft itself. It was further shown that gyroscopes are rarely, if ever, used on craft of the 18-to-22-foot class. Indeed, the testimony of witnesses and Coast Guard records introduced at trial failed to establish their use on any of the six water jet craft hereinabove-identified.

Conclusion of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is not entitled to recover and his petition is therefore dismissed.

U. S. GOVERNMENT PRINTING OFFICE: 1973

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-502

LOUIS STRUMSKIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The petition for certiorari was not timely filed.

On February 16, 1973, the Court of Claims entered final judgment for the United States dismissing a suit because the court found no infringement of the petitioner's patent. A motion for a rehearing was denied on April 13, 1973. On April 27, 1973, petitioner filed a second motion for a new trial. The Court of Claims denied this second motion on June 20, 1973. No extension of time for filing a petition for certiorari was obtained, and the petition was filed on September 17, 1973.

Since the petition for certiorari was filed more than ninety (90) days after the entry of the final judgment, the petition was not filed within the time specified by 28 U.S.C. 2102(c), unless the second motion, filed on April 27, 1973, tolled the running of the statutory period.

The time for petitioning is postponed by the timely filing of a motion for a new trial or a petition for a rehearing. The first motion, filed on February 26, 1973, was such a motion and tolled the time for petitioning until April 13, 1973, when the motion was denied. The second motion, however, was not such a motion. Its filing was not authorized by Rule 151 of the Court of Claims, and it did not suspend the running of the 90-day period for petitioning.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1973.

FILE COPY

Supreme Court, U.S.
FILED
NOV 16 1973
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

PETITIONER'S REPLY

LOUIS STRUMSKIS V. THE UNITED STATES

October Term, 1973
No. 73-502

Louis Strumskis, Petitioner (Pro se)
3230 S. E. 10th Avenue
Ocala, Florida 32670

OBJECTIONS BY THE PLAINTIFF

Now comes the Plaintiff in Mr. Louis Strumskis and particularly objects to defendant's RESPONSE filed on November 5, 1973, first paragraph, to wit:... "The petition for certiorary was not timely filed"... because such an assumption against Plaintiff's petition which was filed on September 17, 1973 is obviously contrary to the United States Court of Claims decree of June 20, 1973.

There are two separate cases found in this one order of June 20, 1973. The defendant has obviously confused himself with that one other case involving Chris Berg, Inc. and his particular motion for .... *"Reconsideration out of time"*.

A copy of this same order filed on June 20, 1973 is attached at the rear of this brief.

Also, Plaintiff is at a loss to understand what manner of relationship Criminal Law has in this one

patent infringement case, since defendant has taken to quote Title 28 U.S.C. 2102, as can be seen at the bottom of page one in DEFENDANT'S MEMORANDUM filed November 5, 1973. Such a title and section of the law deals solely with criminal cases.

CONCLUSION

Defendant's response comprises barely more than one page, yet it is so grossly contradictory to facts and in error to laws, that this one Supreme Court cannot seriously take any consideration of such a response by reason of obvious nonrelevance and confusion within the weightier matters involved in that one documant.

Therefore, in view of such an incompetent defense, it does follow that this Supreme Court must consequently grant to review petitioner's Writ of Certiorari. Petitioner awaits to hear from this court in order to proceed with Rule No. 26 and also establish a time for oral argument.

With all due regards,

Louis Strumskis

Louis Strumskis, Petitioner

IN THE UNITED STATES COURT OF CLAIMS

231-68 CHRIS BERG, INC.)
) v. THE UNITED STATES
232-68 LOUIS STRUMSKIS)

Before COWEN, Chief Judge, LARAMORE, Senior Judge, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, Judges, except that Senior Judge LARAMORE participated only in No. 231-68 in which Judges KUNZIG and BENNETT took no part.

ORDER

These cases come before the court on motions requesting permission to file a motion for reconsideration out of time and a motion for a new trial under Rules 151 and 152 of the Rules of this court and, on consideration thereof,

IT IS ORDERED that said motions be and the same are denied as follows:

231-68 Chris Berg, Inc. Plaintiff's motion requesting permission to file a motion for reconsideration out of time.

232-68 Louis Strumskis. Plaintiff's motion for a new trial under Rules 151 and 152.

BY THE COURT

JUN 20 1973

Chief Judge

FILE COPY

FILED
DEC 17 1973
MICHAEL RODAK, JR., CLERK

No. 73-502

IN THE SUPREME COURT OF THE UNITED STATES

LOUIS STRUMSKIS, Petitioner

V.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

A PETITION FOR REHEARING

Louis Strumskis, Plaintiff
3230 S.E. 10th Avenue
Ocala, Florida 32670

IN THE SUPREME COURT OF THE UNITED STATES

No. 73-502

LOUIS STRUMSKIS, Petitioner (Pro-se)

V.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

A PETITION FOR REHEARING UNDER RULE 58

INTRODUCTORY STATEMENT

This Petition for rehearing contains merely one STATEMENT which involves Title 28 U.S.C. 2101 (c) into the 90-day computation of time limit offered a litigant under the laws of this Nation.

Petitioner proceeds with the belief that no Justice or member of this Court is infallible, but rather, subject to error and that an error was indeed uttered by way of that denial to a writ of Certiorari, as rendered on December 3, 1973.

Therefore, this Supreme Court must now lend an ear to the justified grievances found in this Petition, so that this Court may not appear inconsistent with substantial Justice.

Further, may each and every member of this Supreme Court note that this Litigant does not

approach the Court or any member thereof with any manner of threats or scandalous matters.

You will find attached at the rear of this Petition these three Documents:

1. A decree uttered by the Court of Claims on June 20, 1973.

2. A Marion County Sheriff's affidavit attesting to the lack of a criminal record of Mr. Louis Strumskis, the Petitioner pro-se in this Case.

3. A Certificate stating that this Litigant offers forthwith Petition in good faith and not for delay.

STATEMENT

A litigant is entitled and must be encouraged to exhaust the usage of various and concurrent reliefs after a negative judgement in a lower Court, from which that latter decree must then be considered to compute the time limitations into a higher Court, were such a further step necessary.

ARGUMENT

The only defense given by the respondent in his MEMORANDUM filed on November 5, 1973 is the **unclear** and **legally unfounded** statement that the Plaintiff in this Case was entitled only to that motion for a rehearing denied on April 13, 1973, but not to his second and concurrent motion for a new trial, as denied on June 20, 1973 .... from which to compute the 90-day time limitation to a writ of Certiorari as filed by this Petitioner on September 17, 1973. That response merely quoted some vague criminal law.

Listen, a lower Court made available to this Litigant that relief to a new trial and it was legally possible that the same lower Court could have

ALLOWED this same Litigant a re-trial rather than a denial on that June 20, 1973 ORDER.

Were a new trial ALLOWED this Litigant on June 20, 1973, it is also possible that his grievances would have been resolved therein and consequently such a relief would have eliminated any need to approach the Supreme Court for a writ of Certiorari.

Does not the Supreme Court continually recommend that differences be settled in the lower Courts? Then by what manner of thinking or legal foundation would an active, lower-Court Litigant, take to bother the Supreme Court with any extensions of time motions, or any other matters .... if there be no categorical need for such action. The motion for a new trial had to be resolved. The asking for an extension of time in a higher Court while a motion is pending in a lower Court is both irrational and legally untenable.

Therefore, in view of that singular defendant's Statute involved in that one Supreme Court's negative decision filed on December 3, 1973, the Supreme Court has consequently taken to rely upon some vague Criminal Law by which to defeat the Petitioner. It is a common and a lawful escalator to proceed from a denied rehearing to the motion for a new trial and Defendant was void of a legal foundation.

Yes, this Plaintiff did sincerely attempt to settle his grievances in that lower Court, by the seasonable usage of those reliefs offered therein.

"A motion for a new trial, seasonably made, suspends the running of the time within which to file an application for appeal". Chicago, etc. R.Co. V. U.S., 1919, 54 Ct. Cl. 116.

See also: *"Time within which application could*

be made for review in Supreme Court did not begin to run until after disposition of motion for a new trial (sic) seasonably filed and entertained." U.S. V. Seminole Nation, 1937, 57 S. Ct. 283, 299 U.S. 417, 81 L.Ed. 316.

Ultimately, this Supreme Court cannot properly initiate of itself further arguments or defenses not already established by the defendant in his response of November 5, 1973. However, it is now clear to see that the Supreme Court's decision of December 3, 1973 against the Case of Petitioner, was indeed without a legal foundation, as seen clearly in Petitioner's reply filed on November 16, 1973, and therefore unjustly biased to favor the Defendant.

Such gross and unjustified abandonment of the law is at the very least unreasonable and oppressing to the Case of Petitioner.

Truthfully, Ye Justices are not infallible and it is become obvious that Ye Justices must now reconsider and reverse that one oppressing decision as rendered on December 3, 1973.

THE LAW

Title 28 U.S.C. 2101 (c) states in part that ... "a civil action, suit or proceedings before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such Judgement or decree".

In this foundational law, one does not see the specification of relief used, or the various and differing kinds of relief to exhaust, before entering a higher Court.

"The second opinion of Court of Appeals on it's review of order of Federal Trade Commission resolved a genuine ambiguity in the first opinion" ...

... *"so that time within which Certiorari had to be requested dated from second opinion."* F.T.C. V. Colgate Palmolive Co., Mass. 1965, 85 S.Ct. 1035, 380 U.S. 374, 13 L.Ed., 2d 904..... *"If the second Judgement"* .... *"does no more than to restate what has been decided by the first Judgement, the 90-day period within which to apply for Certiorary will start to run from the first Judgement."* ID.

Now then, a rehearing is entirely different from a re-trial. Ye who are lawyers know that. Hence, the motion and arguments presented by this litigant toward that mentioned rehearing and that re-trial in the Court of Claims were necessarily different also because the issues to resolve were fundamentally different. Plaintiff did not cease until he exhausted all pertinent reliefs offered by that Lower Court.

"A Judgement is not final so as to set in motion time for taking an appeal therefrom, until a motion for a new trial, if entertained by the Court, has been disposed of."

U.S. V. Ellicott, Ct. Cl.: 1912, 32 S.Ct. 334, 223 U.S. 524, 56 L.Ed. 535. See Also, Kingman & Co. V. Western Mfg. Co. Neb. 1898, 18 S.Ct. 786, 170 U.S. 675, 42 L.Ed. 1192.

CONCLUSION

As seen in Defendant's two-page RESPONSE of November 5, 1973, the quoting of some vague criminal law is a poor support to defendant's also vague argument. Please see Plaintiff's REPLY filed on November 16, 1973. Therefore, from whence cometh the necessary grounds for that Supreme Court's decision of December 3, 1973??

"In suit in equity defenses not set up in the answer will not be considered". Howes Vs. Nute. C.C.

Mass. 1870 Fed. Cas. No. 6,790.

As provided by Rule 58 (3) this Court should request a reply from the defendant toward an equitable and a full consideration of law involved here, so that his Court may come to understand the pertinence of law which does favor this Petitioner, of course.

Surely, upon an honest review of this Petition by the Supreme Court, the Plaintiff must consequently be allowed to present his grievances by way of a Certiorari review, to be finalized with an oral argument, as provided in Rules 36 and 44, so that this one Court continue to meet and uphold the high standards required of it.

With All Due Regards,

Louis Strumskis, Petitioner

AFFIDAVIT

IN THE SUPREME COURT OF THE UNITED STATES

LOUIS STRUMSKIS, Petitioner (Pro-se)

V.

THE UNITED STATES

No. 73-502

ON PETITION FOR REHEARING
UNDER RULE 58

The Plaintiff, Mr. Louis Strumskis, offers this Petition for a rehearing under rule 58 in good faith and not for delay.

Also, let it be known to all parties concerned that said Plaintiff intends to prosecute such a Case to the fullest extent of the law.

Louis Strumskis

Louis Strumskis, Petitioner
3230 S.E. 10th. Avenue,
Ocala, Florida 32670

Sheriff

DON R. MORELAND

POST OFFICE BOX 387 1987
MARION COUNTY, OCALA, FLORIDA 32670

Sheriff's Office
622-8181
Residence
622-3748

Civil Dept. 622-4630
Jail 622-8282

TO WHOM IT MAY CONCERN:

The records of the Marion County Sheriff's Department do not reflect any criminal charges against LOUIS STRUMSKIS, 3230 S.E. 10th Avenue, Ocala, Florida.

Don Moreland

Sheriff

IN THE UNITED STATES COURT OF CLAIMS

231-68 CHRIS BERG, INC.)
) v. THE UNITED STATES
232-68 LOUIS STRUMSKIS)

Before COWEN, Chief Judge, LARAMORE, Senior Judge, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, Judges, except that Senior Judge LARAMORE participated only in No. 231-68 in which Judges KUNZIG and BENNETT took no part.

ORDER

These cases come before the court on motions requesting permission to file a motion for reconsideration out of time and a motion for a new trial under Rules 151 and 152 of the Rules of this court and, on consideration thereof,

IT IS ORDERED that said motions be and the same are denied as follows:

231-68 Chris Berg, Inc. Plaintiff's motion requesting permission to file a motion for reconsideration out of time.

232-68 Louis Strumskis. Plaintiff's motion for a new trial under Rules 151 and 152.

BY THE COURT

JUN 20 1973

Chief Judge